IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

JULIUS L. MONTON,
Defendant-Appellant.

SUPREME COURT NO. 2007-SCC-0028-CRM
SUPERIOR COURT NO. 02-0116E

Cite as: 2008 MP 14

Decided July 22, 2008

Joe Hill, Saipan, Northern Mariana Islands, for Defendant-Appellant
Kevin Lynch, Assistant Attorney General, Saipan, Northern Mariana Islands, for Commonwealth-Appellee.

BEFORE: MIGUEL S. DEMAPAN, Chief Justice; ALEXANDRO C. CASTRO, Associate Justice; JOHN A. MANGLONA, Associate Justice

CASTRO, J.:

¶ 1 Defendant Julius L. Monton ("Monton") appeals the trial court's reinstatement of his obstruction of justice and driving under the influence of alcohol convictions. Because these convictions were entered pursuant to 6 CMC § 4105, and not 6 CMC § 4113, we find that the trial court properly reinstated them. We therefore AFFIRM.

I

¶ 2 On April 4, 2002, Julius Monton was arrested and charged with assault and battery, resisting arrest, obstruction of justice, driving under the influence of alcohol, refusal to submit to a breath test, and reckless driving. In accordance with a plea agreement, Monton pled guilty to obstruction of justice and driving under the influence. In return, the Commonwealth dismissed all other charges. On July 24, 2002, judgment was entered accordingly.

¶ 3 The trial court sentenced Monton to one year of supervised probation, and a suspended one-year prison sentence. The suspension of imprisonment was conditioned on completion of 48 hours incarceration for obstructing justice, 72 hours incarnation for driving under the influence, payment of a $600 fine, and full compliance with the terms of his supervised probation. Neither party appealed the judgment or sentencing order. Monton complied with all terms and conditions of the sentence and was released from supervised probation on July 24, 2003.

¶ 4 On December 11, 2006, more than four years after his guilty plea, Monton applied ex parte for an order to vacate the two convictions pursuant to 6 CMC § 4113(e). Based on the ex parte application, the trial court entered an order discharging probation and vacating Monton's convictions, thereby clearing his criminal record.

¶ 5 On February 22, 2007, the Commonwealth filed a motion to reinstate the convictions, arguing, inter alia, that 6 CMC § 4113 does not permit the trial court to set aside any given conviction, but only those convictions where sentence is not imposed. The Commonwealth also noted that 6 CMC § 4113 was never discussed in the plea bargain stage and is not referred to in the original sentencing order. On August 24, 2007, the trial court reinstated Monton's obstruction of justice and driving under the influence of alcohol convictions. This appeal followed.

II

¶ 6 Monton argues that 6 CMC § 4113 need not be specifically mentioned in order to apply to his convictions. This is a question of law which we review de novo. *Commonwealth v. Itibus*, 1997 MP 10 ¶ 2; *Commonwealth v. Sablan*, 1996 MP 22 ¶ 5. We consider whether a defendant who has successfully completed the terms of his probation can invoke 6 CMC § 4113, when

neither the plea agreement, nor the sentencing order specify that the defendant was sentenced pursuant to that statute. In *Sablan*, we unequivocally stated that "[a]ny consideration of a 6 CMC § 4113 disposition must be specifically agreed to in the plea agreement or it must be unambiguously specified by the Superior Court since is departs from normal sentencing procedures." ¶ 9. Here, 6 CMC § 4113 was neither discussed in the plea bargaining phase, nor was it mentioned in Monton's sentencing order. As a consequence, Monton cannot invoke the benefits of 6 CMC § 4113. *Id.*

¶ 7 In finding that 6 CMC § 4113 does not apply to Monton's convictions, we next consider which section of the Commonwealth Criminal Code does apply. Under Commonwealth sentencing laws, two types of probation exist, one codified in 6 CMC § 4113, and the other in 6 CMC § 4105. In a section 4105 disposition, the trial court imposes sentence, but suspends the execution of the sentence, usually a period of incarceration, provided the defendant fully complies with all terms and conditions. Following the probationary period, the conviction remains on the defendant's record.

¶ 8 In contrast, 6 CMC § 4113, "is a provision which provides for a deferred imposition of sentence. The defendant is placed on probation for a fixed period of time based on certain conditions. If the defendant complies with all the conditions of the suspended imposition of sentence, the conviction is expunged." *Id*. High courts of other United States jurisdictions have also clarified the difference between suspending the imposition of sentence and suspending the execution of a sentence already imposed. As understood by the Supreme Court of Vermont, "[a] deferred-sentence agreement is a sentence postponed rather than imposed. It is similar to a conditional pardon…." *State v. Rafuse*, 726 A.2d 18 (1998). Additionally, in interpreting the federal probation act, the United States Supreme Court explained that "[w]hen a trial court places a defendant on probation and defers or postpones sentencing, the trial court is said to have suspended the imposition of sentence. When the trial court imposes a fixed definite term of imprisonment but the sentence is suspended for probation, the trial court is said to have suspended the execution of sentence." *Roberts v. United States*, 320 U.S. 264, 268 (1943).

¶ 9 As made clear in *Sablan*, a conviction pursuant to 6 CMC § 4113 – one that incorporates deferred sentencing – must be unambiguously noted in the record, as it is an exception to normal sentencing procedures. ¶ 9 Thus, in the absence of clear indication that this exception has been agreed to by the parties or prescribed by the trial judge, 6 CMC § 4105 must apply. The lack of any such indicator in the record leads us to the inescapable conclusion that Monton was sentenced pursuant to 6 CMC § 4105.

¶ 10 Monton suggests that requiring the trial court to make express mention of the applicable statute is contrary to legislative intent, as neither the statute at issue, nor 6 CMC § 4105 requires the trial court to specify which is applicable in any given case. He claims that there is no legal basis for the Attorney General's contention that 6 CMC § 4105 is the default, as the legislature has not specified which statute is to be customarily used in cases warranting probation. In analyzing the language of the two statutes comparatively we find otherwise.

¶ 11 6 CMC § 4113 requires the trial court to engage in a deliberative process that is not required of a 6 CMC § 4105 disposition. Under 6 CMC § 4113(a) the trial court must determine that a deferred sentence will be in the best interest of the defendant and the public before it may be used. The provision states that "the court, when satisfied that the ends of justice and the best interests of the public as well as the defendant will be served, may suspend the imposition of sentence…." Conversely, 6 CMC § 4105 provides that the court may order probation "where that action is deemed to be in the best interest of justice." While both statutes speak to the ends of justice, section 4113 requires additional evaluation of the defendant's circumstances and the public's interests, indicating that its application is reserved for exceptional situations. Here, the trial court would have needed to assess Monton's unique circumstances and suspend the imposition his sentence according to those circumstances. There is no indication in the record of such an occurrence. The fact that the legislature called for this deliberative process is adequate indication that 6 CMC § 4113 is not the standard for sentencing in the area of criminal probation.

¶ 12 In light of our conclusion that Monton was sentenced under 6 CMC § 4105, we decline to address the legality of the supplementary issues raised by the parties concerning 6 CMC § 4113, including whether the defendant's ex parte motion was legally sufficient, and whether incarceration is an acceptable condition for a 6 CMC § 4113 disposition. For all practical purposes, this Court lost the jurisdiction to do so when the parties failed to appeal the Judgment and Sentencing Order entered on July 24, 2002. Further, Monton's process of adjudication came to a close when he completed his period of probation without incident.

III

¶ 13 For the foregoing reasons, we find that the trial court sentenced Monton under 6 CMC § 4105 rather than 6 CMC § 4113, and thus did not err by reinstating Monton's obstruction of justice and driving under the influence of alcohol convictions. The trial court's decision is therefore AFFIRMED.

SO ORDERED this 22nd day of July 2008.

Concurring:
Demapan, C.J., Manglona, J.